IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.Rev.Pet.No. 1775 of 2002()

MC.27/1994 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA
CRRP.85/1995 of ADDL. SESSIONS COURT-II, MAVELIKKARA

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REVN. PETITIONER:

C.P.DIVAKARAN, KOCHUKALEEKKAL,
CHENNITHALA SOUTH, THRIPPERUMTHURA VILLAGE.

BY ADV. SRI.P.S.NANDANAN
SRI.B.SABU

RESPONDENTS:

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1. SUBHADRA, SREENILAYAM VEEDU,
ARANOOTTIMANGALAM MURI, VETTIYOOR VILLAGE.

2. MALOOTTI, SREENILAYAM VEEDU,
ARANOOTTIMANGALAM MURI,
VETTIYOOR VILLAGE (RESPONDENT NO.2 BEING MINOR
IS REPRESENTED BY THE MOTHER SUBHADRA).

BY ADV. SRI.R.PADMAKUMAR FOR R1
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1775 OF 2002 A

Dated this the 22nd day of October, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the revision petitioner, who was the counter petitioner in M.C. No.27/1994 on the file of JFCM, Mavelikkara, challenges the orders concurrently passed by the courts below directing him to pay maintenance to respondents 1 and 2, who are the wife and child of the revision petitioner. While the quantum of maintenance fixed by the Magistrate was Rs.150/- per month to the wife and Rs.100/- per month to the child, in a revision at the instance of the respondents the Additional Sessions Judge-II, Mavelikkara in Crl.R.P. No.85/1995 enhanced the quantum of maintenance to the wife and child at the rate of Rs.500/- and Rs.200/- per month respectively. It is the said order which is assailed in this revision.

2. The marriage between the revision petitioner and the 1st respondent was on 10.2.1991. The second respondent was born on 5.10.1991. According to the wife, after the birth of the child, the husband started behaving cruelly towards her after

consuming alcohol and demanding more dowry. He used to question his paternity over the child. She alleged that her husband was employed in the government ferry service. He had refused to cohabit with the wife on the allegation that the child was not his. He filed H.M.A.O.P. No.89/1991 before the Sub Court, Mavelikkara, for declaring the marriage with the 1st respondent null and void on the ground that she was pregnant on the date of marriage. The wife and daughter claimed maintenance at the rate of Rs.500/- and Rs.200/- per month.

3. The application for maintenance was resisted by the revision petitioner contending inter alia as follows:-

The 2nd applicant is not the child born to him in the 1st applicant. At the time of the marriage itself the 1st applicant was pregnant and the marriage was conducted suppressing the pregnancy. The 2nd applicant was born as a fully matured child after 236 days of marriage. He has not demanded dowry nor has he ill treated the 1st applicant as alleged. He is not in the habit of taking alcohol as alleged. Since the 1st applicant was pregnant on the date of marriage and the said fact was concealed from him, he filed H.M.A.O.P. No.89/1991 for declaring the marriage to be null

and void. That petition was, however, dismissed. The application for maintenance is without any bona fides and may be dismissed.

4. Both the courts below have concurrently held that the 2nd applicant(2nd respondent herein) was a premature baby born to the revision petitioner and the 1st respondent herein and that the allegation of pre-marital affair made by the husband was not true, that absolutely no evidence was adduced by the revision petitioner/husband to show that the wife was living in adultery and that since he was indulging in physical assault of his wife after coming home drunk, the act of the wife leaving the matrimonial home and claiming separate maintenance was justified.

5. The fact that the revision petitioner was employed in the government ferry service at Ernakulam is not disputed. The only objection raised by the revision petitioner is that the court below was not justified in enhancing the maintenance as there was no evidence to show the income of the revision petitioner. It is true that the wife and child had only alleged that the revision petitioner is employed in the government ferry service and that besides his salary income he was also having a monthly income of Rs.250/- from other properties. But then, the revision petitioner

did not adduce any acceptable evidence to show his income which is a matter within his exclusive knowledge and by virtue of Section 106 of the Evidence Act the burden was on him to show his income. The applicants had discharged their initial burden and in the absence of any material produced by the revision petitioner the Sessions Court was justified in enhancing the monthly allowance to Rs.500/- and Rs.200/- respectively. Even that amount is a paltry amount with which one cannot make both ends meet.

6. The argument of the learned counsel for the revision petitioner that the direction to pay the maintenance from the date of petition, namely, 7.9.94 is illegal, also cannot be continenced. All that sub section (2) of section 125 says is that if the court so orders an application for maintenance may be made operative from the date of application for maintenance. No reasons are expected to be stated by the court for directing that the order for maintenance shall relate back to the date of application. The above provision is to prevent vagrancy and destitution and a person in utter poverty knocks at the door of the criminal court for a pittance and if the trial of the case takes months or years to ripe into a final order and if the courts were to give the applicant

maintenance only from the date of the order, that would be a negation of justice. In the normal course, the order for maintenance should relate back to the date of the application for maintenance and it is only in exceptional cases that it can be made operational from the date of the final order. It is for no fault of the applicant that the court is denying him maintenance for the period from the date of application till the date of final disposal. Hence, no reasons need be stated if the order for maintenance is made operational from the date of the petition.

7. After considering the facts and circumstances of the case, I see no reason to interfere with the revisional order passed by the Additional Sessions Court.

This revision is accordingly dismissed.

The revision petitioner is given three months' time to deposit the entire arrears. He shall, however, continue to deposit the future maintenance without fail.

(V. RAMKUMAR, JUDGE)

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V. RAMKUMAR, J.

Crl. R.P. No. 1775 OF 2002 A

O R D E R

22nd day of October, 2007